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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,935	02/18/2004	Gary Buhman	BUHG 8858US	1920

1688 7590 06/28/2005

POLSTER, LIEDER, WOODRUFF & LUCCHESI  
12412 POWERSCOURT DRIVE SUITE 200  
ST. LOUIS, MO 63131-3615

EXAMINER
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VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/780,935

Applicant(s)

BUHRMAN, GARY

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5 and 7-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 7-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by French Patent FR 2768018 to Chamoulaud in view of

Regarding Claim 15, Chamoulaud teaches a process of manufacturing a rollable mulch carpet (Chamoulaud page 5 last line) comprising the steps of providing a base material (Chamoulaud #7) that is generally flexible (Chamoulaud page 5 last line it can be rolled) and substantially porous (Chamoulaud page 4 line18-19) and having an upper surface (Chamoulaud Fig.1 #7 surface in contact with element #2); providing a mulch-like material from a weather resistant material that is one of either shredded rubber tires or plastic (Chamoulaud element #2 and page5 line 1-6) and which is made of substantially the same material as the base material (Chamoulaud page 4 line 19 page 5 line 6); and bonding the mulch-like material to the upper surface of the base material only along a lower portion of the mulch-like material such that an upper portion of the mulch-like material is exposed; the mulch-like material being bonded to the base material in a single layer (Chamoulaud Fig. 1 element #2 and 3 make up the mulch material and are bonded on one side only to element #7 and the top side of element #2/3 is exposed).

Regarding Claim 16, Chamoulaud teaches the step of manufacturing the rollable mulch carpet in generally rectangular sections (Chamoulaud Fig. 2).

Regarding Claim 18, Chamoulaud teaches the step of bonding the mulch-like material to the base material is performed either by the application of heat or by chemically bonding the mulch material to the base material (Chamoulaud page 11 section e) and page 5 section e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 5, 7-14, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent FR 2768018 to Chamoulaud.

Regarding Claim 17, Chamoulaud is silent on the rollable mulch carpet is manufactured in generally rectangular sections of about 3 feet in width and about 10 feet in length. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Chamoulaud at the time of the invention since the modification is merely a change in size for an efficient/cost effective production of the product and to manufacture a size that is ergonomically efficient for a person to carry and install and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claim 19, Chamoulaud is silent on the single layer of mulch-like material has a thickness of about 0.5 inches or less. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Chamoulaud at the time of the invention since the modification is merely a change in size for efficient/cost effective production of the product and to allow it to remain flexible and efficiently stored and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claim 1, Chamoulaud teaches a rollable (Chamoulaud page 5 last line) mulch carpet comprising a base material made from a non-biodegradable, generally flexible and porous material (Chamoulaud #7 and page 4 last two paragraphs), the base material having a lower ground engaging surface and an upper surface (Chamoulaud Fig. 1 #7 the side facing element #5, applicant does not claim direct contact); an artificial mulch-like material (Chamoulaud page 5 line 5 and 6) and a natural wood mulch (Chamoulaud page 5 line 1-2), the artificial mulch-like material being made from substantially the same material as the base material (Chamoulaud page 5 line 6 and page 4 line 19) and bonded to the upper surface of the base material only along a lower portion of the artificial mulch-like material such that an upper portion of the artificial mulch-like material is exposed (Chamoulaud Fig. 1 element #2 and 3 together form the mulch material and only one side is in contact with element #7 thus one side is exposed, i.e. the top of element #2); the artificial mulch-like material being

bonded to the upper surface of the base material by chemical or heat (Chamoulaud page 5 section e) and page 11 section e)).

Chamoulaud does not implicitly teach that the artificial mulch-like material has the appearance of natural wood mulch. Chamoulaud teaches using wood and that wood gives a nice aesthetic appearance (Chamoulaud page 3 line 12) and teaches using synthetic i.e. plastic instead of wood. It would have been obvious to one of ordinary skill in the art to modify the teachings of Chamoulaud at the time of the invention to give the appearance (i.e. color or texture) of a natural mulch since the modification is merely an aesthetic design choice to enhance consumer appeal and to blend with the natural environment of intended use [*In re Seid*, 161 F.2d 229, 231, 73 USPQ 431, 433 (CCPA 1947)].

Regarding Claim 2, Chamoulaud as modified teaches the mulch-like material is made from one of either shredded tires or plastic (Chamoulaud page 5 line 6).

Regarding Claim 5, Chamoulaud as modified teaches the mulch-like material and the base material are made substantially from the same rubber or plastic material (Chamoulaud page 5 line 6).

Regarding Claim 7, Chamoulaud as modified teaches the base material is made from one of either a generally porous plastic or a generally porous nylon material (Chamoulaud page 4 line 18-19).

Regarding Claim 8, Chamoulaud as modified teaches the rollable mulch carpet is flexible enough to be stored, transported or installed in a rolled up configuration (Chamoulaud page 5 last line).

Regarding Claim 9, Chamoulaud as modified teaches the mulch-like material is generally weather resistant (Chamoulaud teaches plastic and page 3 line 14-15 and page 4 line 13-14).

Regarding Claim 10, Chamoulaud as modified is silent on the rollable mulch carpet is manufactured in generally rectangular sections of about 3 feet in width and about 10 feet in length. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Chamoulaud at the time of the invention since the modification is merely a change in size for an efficient/cost effective production of the product and to manufacture a size that is ergonomically efficient for a person to carry and install and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claim 11, Chamoulaud as modified teaches the base material includes a plurality of openings (Chamoulaud Fig. 1 #7), but is silent on not greater than about 0.0625 square inches. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Chamoulaud at the time of the invention since the modification is merely a change in size to efficiently allow for drainage but small enough to prevent weed growth derived through routine tests and experimentation. Different environmental applications will require different rates of water transfer and thus the aperture size is climate dependent.

Regarding Claim 12, Chamoulaud as modified inherently teaches the base material and the mulch-like material are resistant to damage by insects (Chamoulaud teaches plastic).

Regarding Claim 13, Chamoulaud as modified teaches the mulch-like material is adhered to the base material in a single layer that substantially covers the upper surface of the base material (Chamoulaud Fig. 1 element #2 is adhered to element #7 in a single layer).

Regarding Claim 14, Chamoulaud as modified is silent on the single layer of mulch-like material has a thickness of about 0.5 inches or less. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Chamoulaud at the time of the invention since the modification is merely a change in size for efficient/cost effective production of the product and to allow it to remain flexible and efficiently stored and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Claims 20 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent FR 2768018 to Chamoulaud in view of U.S. Patent No. 4,617,198 to Overturf.

Regarding Claim 20, Chamoulaud teaches a process of manufacturing a rollable mulch carpet (Chamoulaud page 5 last line) comprising the steps of providing a base material that is generally flexible, substantially porous and has an upper surface (Chamoulaud Fig. 1 #7 and page4 line 18-19); and placing a layer of mulch-like material over the base material and adhering the two layers together (Chamoulaud Fig. 1 #2, 3, and 7) such that an upper portion of the mulch-like material is exposed (Chamoulaud Fig. 1 #2/3 the top is exposed and the bottom is attached to element #7); the mulch-like



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material being made from a weather resistant material that is one of either shredded rubber tires or plastic (Chamoulaud page 5 line 6). Chamoulaud teaches that the adhesive is applied to the mulch material and is silent on applying a layer of adhesive over the base material upper surface; and placing a layer of mulch-like material over the adhesive to adhere the mulch-like material to the base material. However, Overturf teaches that it is old and notoriously well-known to apply a layer of adhesive to a base material to adhere a single layer of particulate material to the top of the base layer (Overturf abstract and Col. 3 line 17 and 25-27). It would have been obvious to one of ordinary skill in the art to modify the teachings of Chamoulaud with the teachings of Overturf at the time of the invention since the modification is merely the selection of an old and notoriously well-known alternate means of manufacturing with the shifting location of the application of the adhesive (instead of applying the adhesive to the mulch it is applied to the base) for a more efficient use of adhesive since only the top surface of the base material needs to be coated instead of coating all of the surface of the mulch particles.

Regarding Claim 4, Chamoulaud as modified teaches the step of adhering the mulch-like material to the base material comprises using an adhesive which is generally waterproof (Chamoulaud page 6 line 20).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1,2,4,5 and 7-20 have been considered but are moot in view of the new ground(s) of rejection.

Upon further consideration the examiner maintains that the mulch material consists of both elements #2 and 3 together and that even though there is a coating of element #3 on top of the mulch particles these mulch particles are still exposed since there isn't a layer like the base layer on top of it. The surface of the completed device on the top of the mulch material undulates to the pattern of the particles because the particles are exposed. Also, the examiner maintains that the term bonded can mean connected or attached.

U.S. Patent No. 4,617,198 to Overturf corresponds to prior cited reference U.S. Patent No. 4,794,726 to Fawcett et al (Col. 3 line 19).

Examiner maintains that the base taught by Chamoulaud is non-biodegradable (Chamoulaud page 4 line 21-22).

Applicant has not patentably distinguished over the teachings of the cited prior art.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 5,395,467 teaches applying an adhesive to a base material to bond a top layer of artificial natural product to it.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

14 June 2005